IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WP(C).No. 34192 of 2005(U)

PETITIONER:

T.C.KRISHNAN NAMBOOTHIRI,
BEEKEEPING FILEDMAN(RETIRED),
RESIDING AT CHANDRAMANA ILLAOM, MUTTOM NORTH,
THATTARAMBALAM, MAVELIKARA.

BY ADV. SRI.R.RAJASEKHARAN PILLAI
SRI.GEORGE T. THACHETT
SMT.SABINA JAYAN

RESPONDENTS:

THE KERALA KHADI AND VILLAGE
INDUSTRIES, BOARD REPRESENTED BY THE SECRETARY,
KHADI BHAVAN, VANCCHIYOOR, THIRUVANANTHAPURAM.

BY SRI. HARISH, SC FOR KHADI BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON 11/09/2007 DELIVERED THE FOLLOWING:

WPC NO 34192/05

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE ORDER NO.KB.11473/2000/A13/E1(B) DT. 16.1.01 ISSUED BY THE RESPONDENT

EXT.P2. COPY OF THE CHARGE MEMO NO. KB.11473/2000/A13/E1(B) DT. 18.9.02 FROM THE RESPONDENT

EXT.P3. COPY OF THE LETTER NO. KB.11473/2000/A13/DT. 12.5.03 FROM THE RESPONDENT

EXT.P4. COPY OF THE EXPLANATION DT. 28.8.03 FROM THE PETITIONER TO THE RESPONDENT

EXT.P5. COPY OF THE NOTICE 4.12.03 TO THE PETITIONER FROM THE ENQUIRY OFFICER

EXT.P6. COPY OF THE MEMO NO. KB.11473/2000/A13/E1B DT. 17.1.04 FROM THE RESPONDENT

EXT.P7. COPY OF THE JUDGMENT DT. 16.2.04 IN W.P.(C) NO.5532 OF 2004 OF THIS HON'BLE COURT

EXT.P8. COPY OF THE ORDER NO. KB.219/03/E1 (A) DT. 23.12.03 OF THE RESPONDENT

RESPONDENT'S EXHIBITS:

EXT.R1(a). COPY OF THE ENQUIRY REPORT SUBMITTED BY V.M. MATHACHAN, ENQUIRY OFFICER

EXT.R1(b). COPY OF THE STATEMENT GIVEN BY THE PETITIONER ON 17.12.03

/TRUE COPY/

PA TO JUDGE.

V. GIRI, J.

W.P.(C). NO. 34192 OF 2005

Dated this the 11th day of September, 2007

J U D G M E N T

Petitioner retired from service of the respondent on 31.10.02. The main grievance of the petitioner in this writ petition is the non-disbursement of retiral benefits including pension and Death Cum Retirement Gratuity. Reference is made in this writ petition to Ext.P1 order under which petitioner was placed under suspension pending enquiry on 16.1.01as also Ext.P2 memo of charges and statement of allegations. Apparently the allegation in Ext.P2 seems to be that petitioner has misappropriated an amount of Rs. 2,75,112/- . Petitioner had filed Ext.P4 reply to the same. Petitioner contends that subsequently Ext.P5 communication was issued to him asking him to appear before Sri. V.M.Mathachen, described as the Enquiry Officer, and he had actually appeared before Sri. Mathachen on 17.12.03. Nothing further was heard from the enquiry officer. According to the petitioner, thereafter on 17.1.04 he received Ext.P6 communication directing him to remit an amount of Rs. 7,62,481.85/-, stated to be the liability in relation to the Elanthoor Khadi Grama Soubhagya for the period from 1996-97 to 2000-01.

2. Ext.P6 was challenged by the petitioner in W.P.(C) No.5532/04. After hearing the learned Standing Counsel for the Board as well, the said

writ petition was disposed of by Ext.P7 judgment. The operative portion of the said judgment is relevant and is extracted hereunder

> *"Learned Standing Counsel for the Board, Sri. V.V. Joshy was heard in the matter. He submits that by way of Ext.P6, only the position is made known to the petitioner and recovery will be effected only after completing the enquiry proceedings. Petitioner offers all Co-operation in the enquiry proceedings. I record the submission of the learned Standing Counsel for the Board that recovery proceedings will not be initiated till such time enquiry is completed."*

3. As stated above, the writ petition was filed seeking a direction to the respondent to pay DCRG and his actual pension (what is now being paid to him as provisional pension at 75% of the admissible pension) along with arrears on 1.11.02. Petitioner also seeks a declaration that no amount can be realised from the petitioner charged on his pensionary benefits.

4. A counter affidavit has been filed by the Board on 4.9.07 inter alia contending that after Ext.P7 judgment, the enquiry, which is referred to therein, was completed after giving fair chance of hearing to the petitioner and a report was submitted on 25.2.04. Ext.R1(a) is referred to as the said enquiry report and Ext.R1(b) is described as the sworn statement given by the petitioner before the enquiry officer. The enquiry report was placed before the Board on 16.3.04 wherein it was resolved that both criminal and civil actions may be initiated against the petitioner to realise the total liability of Rs.7,30,893.80/-. It is contended that in spite of sending

repeated notices, petitioner has failed to clear his liability and the Board has initiated steps to conduct a Vigilance enquiry against the petitioner and a case is therefore registered as V.E. 13/2005 PTA in the Vigilance and Anti Corruption Bureau, Pathanamthitta. Apparently, the investigation is going on. It is stated that the liability has been quantified after completing the enquiry, as directed by the Board and demand notice was served on the petitioner for realising the amount due within the stipulated time.

5. I have heard Sri. Rajasekharan Pillai, learned counsel for the petitioner and Sri. K.P.Harish, SC for Khadi Board. Departmental enquiry was commenced against the petitioner under Ext.P2 prior to his retirement. Petitioner retired on superannuation on 31.10.02 while he continued under suspension. Ext.R1(a) report is stated to be the enquiry report submitted on 25.2.04. Petitioner seriously disputes the correctness and even the genuineness of Ext.R1(a). According to him, no enquiry was conducted by Sri. Mathachen and therefore the enquiry report cannot be relied on. It is not possible for this Court in proceedings under Article 226 of the Constitution of India to decide whether a valid enquiry was actually held and if so, whether Ext.R1(a) is the report thereon. But it has to be noticed that a departmental enquiry will not come to a completion merely on the completion of an enquiry. The report is to be forwarded to the delinquent official and if the disciplinary authority accepts the report, the tentative findings of the disciplinary authority on the charges levelled against the

delinquent arrived at, should be communicated to him and the delinquent must be given an opportunity to represent against the contents of the report and the proposal on the part of the disciplinary authority to accept the report. The delinquent's representation will have to be considered and if the disciplinary authority finds the same to be unsatisfactory, a notice will have to be issued to the delinquent official proposing a suitable punishment. In the circumstances where the delinquent official is retired pending enquiry, purpose of the enquiry and other steps that could be taken in that regard is to find out whether there is any liability or whether the Corporation can be considered as having suffered any loss on account of the actions of the delinquent. Treating the enquiry report as a material it is open to the employer, if it is permissible in law and is within the time frame stipulated under the Kerala Service Rules (which is admittedly applicable to the organisation in question), to claim the amount from retirement benefits that are due to the delinquent. But it is absolutely essential that the proceedings must come to an end. The enquiry has not come to an end merely because an enquiry report is submitted by the enquiry authority. Further steps as indicated above definitely will have to be taken.

6. It is not the case of the respondent that copy of Ext.R1(a) was forwarded to the petitioner. No final order has been passed by the competent authority, as to how the disciplinary proceedings has actually

come to an end. In fact there is nothing on record to show that the enquiry commenced as per Ext.P2 has actually come to an end so far.

7. With the above position of the background, the question as to whether the retirement benefits that are due to the petitioner can now be directed to be released to him. It is to be noticed that relying on Ext.R1(a) report respondent contended that there is a liability to the tune of Rs. 7,30,893.80/- due from the petitioner. It is the contention of the petitioner that in the aforementioned manner the sum has been determined after the completion of the enquiry, as evident by Ext.R1(a). Apart from the fact that the enquiry report has not been forwarded to the petitioner, respondent has not been able to place before the Court any material to show that the liability for the aforementioned sum has actually been determined, after notice to the petitioner. Learned counsel for the respondent refers to Ext.P6 memo of charges wherein a demand for an amount of Rs. 7,621, 481.85/- was made. It is not the case of the respondent that the liability was quantified prior to Ext.P6. In fact the contentions seems to be otherwise. It is stated in Para.4 of the counter affidavit as follows:

> "*It is submitted that the liability is quantified after completing the enquiry as directed by this Hon'ble Court and demand notice was served to the petitioner for realising the liability within the stipulated time. Hence the contention of the petitioner that he is entitled to get the protection as per the provisions of Note 3 rule 3 Part III Kerala Service Rules, will not stand in the eye of law.*"

8. Enquiry report Ext.R1(a) is stated to be submitted on 25.2.04. This is subsequent to Ext.P6. Therefore, the demand made in Ext.P6 cannot be treated as consequential upon the determination of the liability of the petitioner. It is to be treated as a show cause notice. Reference in this regard could be made to that portion of Ext.P7 judgment, which has already been extracted above. On repeatedly asking the learned counsel for the respondent as to whether there is any other proceedings to show that the liability of the petitioner has been finally determined after the date of Ext.R1(a), which is stated to be 25.2.04, no such material could be placed before me. In other words, it cannot be said that there is a final determination of the liability to the tune of Rs.7,30,893.80/- hitherto after due notice to the petitioner.

9. Learned counsel for the petitioner contends that in these circumstances there is no justification on the part of the respondent in not releasing and disbursing the DCRG due and admissible to the petitioner and also full pension due to him instead of the provisional pension, as granted under Ext.P8.

10. I am not inclined to issue such a direction straight away at this stage. The respondent has a case that an amount of Rs.7,30,893.80/- is due from the petitioner. Reference is made to a decision taken by the Board of Directors of the respondent to proceed against the petitioner in both criminal and civil actions. It is open to the respondent to do so and it

clearly open to the petitioner to resist the same by taking up all such contentions that are available to him including the contention that Ext.R1(a) report is not admissible or acceptable. But it is necessary in this circumstance that the disciplinary proceedings initiated under Ext.P1 comes to a termination without further delay and subject to the right available to the respondent-Board to take such steps that are available to them in accordance with law, for recovery of any amount that may be due from the petitioner. It is also necessary that the petitioner be given the DCRG and also full pension as is due to him in law without much delay. In the result, the writ petition is disposed of with the following terms:

(1) The respondent shall finalise the disciplinary proceedings under Ext.P1 in accordance with law, taking note of the observations made above, against the petitioner, within three months from the date of receipt of a copy of this judgment.

(2) Needless to say, copy of the enquiry report will have to be forwarded to the petitioner and he must be given adequate opportunity to object to the same. Petitioner will be entitled to take such objections as are available to him in law with regard to the veracity of Ext.R1(a) and also the contents of the same.

(3) It will be open to the respondent-Board, after completion of the disciplinary proceedings within the time frame mentioned above, to take steps as are available to them in accordance with law for recovery of any

amounts that may be due from the petitioner. If such steps are taken it is obviously open to the petitioner to resist such steps by taking all contentions available to him in law including bar of Imitation on the right of the respondent to recover any amount from the delinquent official from the DCRG payable to such delinquent official.

(4) Subject to any order that the respondent may obtain from any court in any proceedings that may be instituted against the petitioner either on the basis of materials available after completion of the disciplinary proceedings within the time frame mentioned above, or on the basis of the determination of the liability, which is yet to take place, the entire DCRG due and admissible to the petitioner shall be disbursed to him within a period of four months from the date of receipt of a copy of this judgment. Petitioner shall also be disbursed the full pension due to him after adjusting the provisional pension that has already been paid to him, pursuant to Ext.P8, within the same time frame.

The writ petition is disposed of as above.

V. GIRI, JUDGE

vps

ANTONY DOMINIC, JUDGE

OP NO.16383/98

JUDGMENT

5TH SEPTEMBER, 2007